

(1984) 09 MP CK 0002

Madhya Pradesh High Court

Case No: None

Divisional Forest Officer

APPELLANT

Vs

Gotiya @ Gattiya and Others

RESPONDENT

Date of Decision: Sept. 28, 1984

Acts Referred:

- Motor Vehicles Act, 1939 - Section 110B, 110D

Citation: (1985) 1 ACC 277

Hon'ble Judges: K.L. Srivastava, J

Bench: Single Bench

Judgement

K.L. Srivastava, J.

This appeal u/s 110-D of the Motor Vehicles Act 1939 (hereinafter referred to as "the Act" is directed against the award dated 30-7-1979 made by the Motor Accident Claims Tribunal, Mandleshwar in Claim Case No. 20 of 1978.

2. It is not in dispute that the M.P. State Government's jeep bearing registration No. MPZ 4703 was under the control of the appellant, the Divisional Forest Officer, Barwani and was involved in an accident on 2-2-1976, resulting in the death of Shantilal aged 7 or 8 years. Respondent No. 1 aged 30 years is the father and the respondent No. 2 aged 25 years is the mother of the deceased. The respondent No. 3 Salim Khan was in the employment of the State Government and was driving the jeep in question at the relevant time.

3. On a claim petition having been presented by the respondents Nos. 1 and 2 against the Government, the present appellant and the respondent No. 3, the driver, the Claims Tribunal on the appraisal of the evidence before it, finding that the deceased belonged to the lower strata of society made the impugned award under which a sum of Rs. 5,000/- has been ordered to be given to the parents of the deceased as compensation inclusive of Rs. 1,000/-towards general damages. The appellants' contention is that, in the amount awarded as compensation is too high.

4. Section 110-B of the Act lays down that the compensation has to be just. In the decision in *United India Insurance Co. Ltd. v. P.I. and Ors.* 1982 ACJ 521 it has been pointed out that Section 110-A of the Act contemplates compensation for the death or injury and not any substitute for the loss of income and the compensation has to be just and has to be ascertained in a fair and reasonable manner.

5. In the decision in [Mangaldas Mohanlal Patel and Another Vs. Union of India and Another](#), it has been pointed out that where a young boy who was not earning is involved in a fatal accident, it is difficult to evaluate his future earning capacity and compensation has to be ascertained with reference to chance of future prospects from him to the parents. This has to be done on the basis of probabilities. The following pertinent observation may usefully be reproduced:

...But the standard of civil proof is a balance of probabilities. If the evidence shows a balance in favour of it having happened, then it is proved that it did, in fact, happen. It will often be difficult in a particular case to decide whether the claim is merely speculative or one which is "pressed to extinction by the weight of multiplied contingencies" or is substantial. Such question must be left to the Tribunal to decide on broad lines, without regard to legal unicities, but on a consideration of all the facts in proper perspective.

6. In the instant case, apart from the question of "imponderables", the prospect of the respondents getting financial help from the deceased, in the absence of anything positive to the contrary, can certainly be termed as reasonable.

7. The power of the appellate Court to interfere with the award of compensation is circumscribed as held in the decision in *State of Kerala v. Vijaykumaran* 1982 ACJ 451. The following except has been reproduced in para 10 of the judgment:

This Court will be disinclined to reverse the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled.

8. In these days of rising prices a compensation of Rs. 5,000/- for the death of the son aged 7/8 years can by no means be characterised as excessive. This Court in *Abdul Ajij's* case reported in 1982 JLJ Note 78 maintained the award of Rs. 7,200/- to the parents of the deceased boy aged 6 years.

9. In the result, the appeal fails and is dismissed with costs. The award is affirmed. Counsel's fee Rs. 100/- only if certified.